

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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RAIL RATE CHALLENGES)	
UNDER THE STAND-ALONE)	Ex Parte No. 657
COST METHODOLOGY)	
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STATEMENT BY:

COLORADO WHEAT ADMINISTRATIVE COMMITTEE

IDAHO BARLEY COMMISSION

IDAHO WHEAT COMMISSION

MONTANA WHEAT & BARLEY COMMITTEE

NATIONAL ASSOCIATION OF WHEAT GROWERS

NATIONAL BARLEY GROWERS ASSOCIATION

OKLAHOMA WHEAT COMMISSION

SOUTH DAKOTA WHEAT COMMISSION

TEXAS WHEAT COMMISSION

WASHINGTON WHEAT COMMISSION

The above-referenced organizations ("*Wheat & Barley Growers*") submit this their Statement in the above described proceeding.

1 The *Wheat & Barley Growers* subscribe to the Shipper's Joint Statement of Principles
2 and offer this Statement as a supplement in this proceeding. Your representative also
3 states that *Wheat & Barley Growers*, due to scheduling conflicts, do not anticipate
4 participating in the Public Hearing scheduled for April 26th in this proceeding.

5
6 Collectively, the *Wheat & Barley Growers* represent over 100,000 farm
7 producers/members. *Wheat and Barley producers do not have economic alternatives to*
8 *rail transportation.* They are captive and tied to rail transportation with no viable
9 alternatives. *Wheat and Barley producers are unique because they bear the cost of*
10 *freight transportation and cannot pass on increased transportation costs to their*
11 *customers.* Thus their level of captivity when captive is absolute.

12
13 While the *Wheat and Barley Growers* have not filed a SAC case in recent years, their
14 last major experience was with the McCarty Farms case in which the ICC/STB changed
15 the Constrained Market Pricing system underlying the case adjudication 3 times over
16 the 19 years of ICC/STB deliberations. While some at the Board have indicated the
17 McCarty Farms case was not their finest hour, it is symptomatic of the problems *Wheat*
18 *& Barley Growers* have encountered in trying to assert captive shippers rights which
19 were granted under 49 USC 10101 - Title 49 SubTitle IV, Part A, Chapter 101 namely
20 the charge to the STB, "In regulating the railroad industry, it is the policy of the United
21 States Government (1) to allow, to the maximum extent possible, competition and the
22 demand for services to establish reasonable rates for transportation by rail; ..."

23
24 Whole states in this country are now captive to single railroads. Indeed, whole regions
25 and even whole industries are completely captive to a single railroad.

26
27 In most cases, the agricultural rail customers ship to many destinations. The result is
28 that in many instances there is not a single origin-destination pair whose revenues
29 would lend itself to the economics of a SAC rate complaint. Coupled with the
30 observation is that ICC/STB was apparently not comfortable in McCarty Farms

1 adjudicating wheat rate structures of entire states served by a single railroad which
2 would lend itself to the economics of a SAC rate complaint. No longer does one see in
3 the world of railroads one of the foundations of constraint market pricing – namely
4 excess capacity.

5
6 Where a rail customer is captive, the railroads do not behave as they do when they
7 have rail-to-rail competition. Railroads with captive markets have sought to increase the
8 captivity levels of their rail customers and captive rail customers have learned to fear
9 their railroads.

10
11 What fear are captive shippers speaking of? Fear of reprisals from market dominant
12 railroads. In the agricultural transportation market, with change of just a few cents in the
13 traditional cross country differential of the agricultural tariff rate a railroad can wipe out
14 an elevator's long-established competitive position. Why would a railroad actually do
15 such a thing? To keep 'order' in their house. What the railroads feel is at stake is their
16 right to charge high rates to captive shippers in areas where they are the sole railroad,
17 known as their 'franchise' area. In the captive areas, the railroads have all the rail
18 business. In the event of an elevator becoming uncompetitive (or seeks a rate
19 complaint), a change in a long-standing cross-country differential will simply move the
20 grain to another captive elevator. Thus the railroad still gets the business. Who bears
21 the cost for the increased shipping? The farm producer bears the cost. The rail
22 customer is faced with a market dominant railroad that has proven to be effective at
23 wearing out complainants and tenacious in its defense by pouring huge funds into
24 litigatory defense knowing whether they win or lose the railroad will be able to find other
25 captive shippers to pay the costs. Wheat & Barley Growers believe that the STB bears
26 some complicity in the growth of the SAC cases complexity. For the rail customer their
27 competitive position may be dictated by railroad actions or inactions. Market dominant
28 railroads have been known to cancel all tariff rates for a particular captive shipper's
29 origination point in order to obtain the contract provisions or concessions the railroad
30 desires.

1
2 Negotiations of reasonable rates by captive rail customers are nearly impossible. The
3 dominant railroad will simply state what the rail rate or rail practice is going to be. If a
4 rail customer is trying to compete against a competitor whose rate structures are the
5 result of competition between railroads, the market dominant railroad believes it can set
6 and influence the market place price for the commodity. Where a rail customer
7 presents evidence that a competitor located on a competitive line is causing marketing
8 problems (geographic competition) for the rail customer, experience has shown that the
9 market dominant railroads during a rate negotiation process state that they don't
10 compete with your competitors located on another carriers line and the rail customer
11 must be flexible and change their market areas! These are real responses by the
12 market dominant railroads to captive rail customers.

13
14 Are these fears well founded? Railroads show up in every legislature of the states
15 represented by the *Wheat & Barley Growers* trying to defeat any legislation that would
16 enhance rail customer's competitive position. The railroads fight issues like increased
17 truck weights, economic development efforts that study lack of competition, funding for
18 future rate cases and any increased access to competition such as river navigation,
19 build outs, etc. Railroads label any suggested change as re-regulatory even if the
20 change is clearly not re-regulatory. Railroad's argue that government intervention is
21 *necessary* to insure that they earn "adequate revenues," while at the same time,
22 railroad's argue that no government intervention is necessary to limit their monopoly
23 power!

24
25 Views of *Wheat & Barley Growers*:

- 26 • Since the Board's first pronouncement in Ex Parte No. 646 on small rate rules
27 in March, 2002, the STB has not, in two years, issued preliminary rules.
- 28 • The STB is charged with protection of the nation's captive shippers from
29 railroad abuse and with making sure the rail rates and practices the captive
30 shippers face are 'reasonable'. This includes protecting *Wheat & Barley*

1 *Growers* from monopoly pricing and monopoly practices by market dominant
2 railroads.

- 3 • Since the BNSF and UP/SP mergers, the degree of market indifference
4 displayed by this nation's railroads towards captive shippers continues to
5 reach new levels of market domination each year all over the growing areas
6 of the western half of the United States stretching from Texas to Pacific
7 Northwest.
- 8 • Fear of railroad economic power and potential retaliation against captive rail
9 customers for filing complaints coupled with a regulatory process that is
10 fraught with dubious outcome are the main reasons why captive rail
11 customers are coming together in record numbers to provide work efforts to
12 bring more effective rail-to-rail competition back to this industry.
- 13 • The current process is fraught with uncertainty and there appears to be no
14 longer a policy following *stare decisis* in Board decisions. The railroads
15 continue to use any proceeding to intimidate captive shippers. The rate
16 complaint process has become a moving target with each new decision by
17 this Board. The standards continue to change and change creates
18 uncertainty.
- 19 • The STB recent actions suggest that it is focusing on dispute resolution as a
20 way of creating a dialogue between rail customers and the dominant rail
21 carriers which seems to amplify a continuing STB focus on process rather
22 than substance.
- 23 • *Wheat & Barley Growers* subscribe to the premise that the Board should not
24 use rulemaking or other notice-and-comment procedures to address issues of
25 SAC implementation for the stated four interrelated reasons.
- 26 • If private-sector solutions are to be preferred, there must be more effective
27 rail-to-rail competition. However, continuing the status quo where whole
28 regions and whole industries are captive, equates to a free hand for monopoly
29 railroads where there is neither effective competition nor effective regulation.

Submitted by:

s/ 

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Colorado Wheat Administrative Committee

Idaho Barley Commission

Idaho Wheat Commission

Montana Wheat & Barley Committee

National Association of Wheat Growers

National Barley Growers Association

Oklahoma Wheat Commission

South Dakota Wheat Commission

Texas Wheat Commission

Washington Wheat Commission

